

**HIRING A VETERAN COULD BE BEST DECISION YET**

# **THE ILLINOIS Manufacturer**

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Winter 2015

**Advancing  
manufacturing  
through education  
and innovation:  
Today and into  
the future**

**Handling an EEOC charge**

**NLRB implements  
pro-labor agenda in 2015**

**Developing your intellectual  
property strategy**



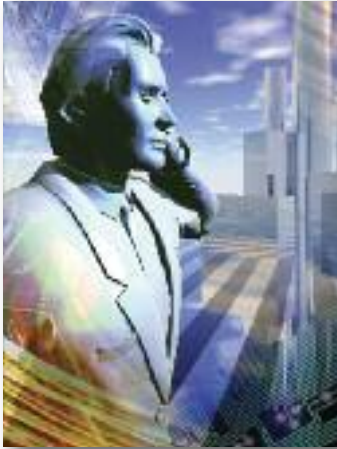


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# Winter 2015



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## Mission Statement

The object for which the Illinois Manufacturers' Association was formed is to strengthen the economic, social, environmental and governmental conditions for manufacturing and allied enterprises in the state of Illinois, resulting in an enlarged business base and increased employment.

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## Striving to meet the challenges ahead



In 2015, we will be pursuing implementation of a comprehensive apprenticeship pathway of study that will greatly benefit employers with hard-to-fill career opportunities.

Nearly 10 years ago, then chairman of the IMA Board Ron Bullock of Bison Gear and Engineering Corp. began leading an association effort to become actively involved in addressing the growing skills gap that had emerged between Illinois' manufacturers and the education system. The IMA Education Foundation, our not-for-profit subsidiary, undertook the challenge of creating multiple pathways of study for young people, as well as adults, to follow to master the basic skills needed for a great manufacturing career.

Fast forward to 2015. In the just released 2014 Annual Report to the IMA Board, the IMA Education Foundation (EF) reports delivering training programs for high school students, community college students and adult career-changers, as well as highly focused programs for returning veterans, on no fewer than seven programmatic platforms. In addition, a fully operational German-styled apprenticeship program of study is set to launch a pilot in the Chicago suburbs this fall.

To be sure, a good deal of credit for any measure of success we've experienced over the first three full calendar years implementing the Manufacturers Education Initiative needs to be given to our partners in the education system. In particular I want to acknowledge the leadership of Dr. Ken Ender, president of Harper College, and their leadership of the Illinois Network for Advanced Manufacturing (iNAM). iNAM brings to the table 21 community colleges located throughout Illinois. In addition, we're working with another nine community colleges and 58 high schools around the state, numerous private sector training providers, community-based organizations and veterans' organizations.

Our results have been significant. Illinois now leads the nation in the number of credentials earned in machine skills. The National Institute for Metalworking Skills, (NIMS) reports Illinois residents earned 2,285 credentials in 2014 alone. This was an increase of more than 800 over 2013 results.

Moreover, Illinois nearly doubled the number of credentials earned for basic cross-industry manufacturing skills under the Manufacturing Skills Standards Council (MSSC). In 2013 MSSC awarded 788 credentials . . . in 2014 more than 1,250.

Illinois also grew the number of high schools, community colleges and private training providers offering programs of study aligned to the American Welding Society eight-fold. Welding programs are now offered at more than 130 locations around our state.

Project Lead the Way (PLTW), the popular enrichment program, helps prepare high school students for careers in engineering. Just three short years ago, PLTW added a middle school enrichment program called Gateway to Technology that brings project-based learning to our middle schools. And, just this year an enrichment program called Launch was added for elementary schools. The results have been dramatic. Today more than 130 high schools are offering PLTW and another 119 middle schools have added Gateway to Technology to their curriculum.

In 2015, we will be pursuing implementation of a comprehensive apprenticeship pathway of study that will greatly benefit employers with hard-to-fill career opportunities. We'll be working with our partners to create apprenticeships in the areas of Industrial Maintenance Technology (Mechatronics), Tool and Die Making, Mold Making, Engineering, Airframe and Powerplant (aerospace) and others.

In addition, the Foundation is writing a proposal to be a key partner at the Illinois Manufacturing Laboratory, the \$70 million federal project located on Chicago's Goose Island. In that role, the IMA will help assure access to all the facilities and opportunities the Laboratory promises by small and medium manufacturers and help develop curriculum for even more advanced skills that will be created by virtue of the Lab's work.

Now that we're producing better-qualified applicants, manufacturers need to demand credentials in their job postings. Doing so will deepen our foothold and broaden our influence in our continual efforts to bridge the skills gap as technology and innovation continue advancing in the years ahead.

The retirement of the baby boomers is speeding up — nearly 30,000 manufacturing workers in Illinois will be reaching retirement age annually over the next decade. The race to train and attract newly-qualified manufacturing workers will only become more difficult.

What we have is a great beginning to a never-ending challenge. The good news is that manufacturers meet these kinds of challenges everyday.

It's what you do. ■







## Measure your progress on a global scale

The McGladrey Manufacturing & Distribution Monitor provides valuable industry information that can serve as a benchmark for your company's strategic planning.

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For more information, contact National Industrial Products Practice Leader and IMA board member **Karen Kurek**, at [karen.kurek@mcgladrey.com](mailto:karen.kurek@mcgladrey.com) or 312.634.3920.



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## Last, best chance to get our house in order



It was a bitter and difficult pill to swallow for many lawmakers who for years have passed unbalanced budgets that kicked the proverbial can down the road.

Scarcely a day had passed following last November's election before the multitude of challenges facing Illinois smacked newly-elected Governor Bruce Rauner squarely in the face. Despite facing some resistance from the outgoing administration, who were not eager to cooperate, Rauner aides immediately began the task of unraveling the state budget. What they found was a whopping \$1.6 billion hole that had been hidden by accounting gimmicks. Even worse, while Governor Quinn knew about the budget crisis, he ordered his agencies to continue spending full throttle while he handed out grant money like it was candy at Christmas.

In response, within hours of taking office, Governor Rauner issued the first of several Executive Orders, including one that immediately ceased the awarding of new contracts and grants, and called for the termination of non-essential contracts and an immediate review of state spending. As the saying goes, sometimes the first step to get out of a hole is to stop digging.

Within a month, Governor Rauner addressed a joint session of the General Assembly and presented an honest, straightforward budget. Unlike previous administrations, he did not ask for a delay to present his budget, nor did he rely on gimmicks and smoke and mirrors. It was a bitter and difficult pill to swallow for many lawmakers who for years have passed unbalanced budgets that kicked the proverbial can down the road. The Governor's budget totals \$32 billion. This represents a cut of \$6.2 billion — nearly 18 percent — over the previous year's spending blueprint. There were no sacred cows, save for education which received a bump of nearly \$400 million for K-12 and early childhood programs.

Within the first month, Governor Rauner has called for drastic cuts in state spending while laying out an aggressive new pension reform plan that would move all current state employees hired before January 1, 2011 into a new, less rich pension system. Government actuaries claim that this could reduce our state's \$111 billion pension debt by \$25 billion immediately and save more than \$2.2 billion in this year's budget, where the required pension payment eats up nearly 20 percent of general revenue. Critics appropriately cautioned that this move likely won't result in real savings because it will be challenged in Illinois courts that have already taken a dim view of pension reform.

Governor Rauner has "shaken up" Springfield by calling for an end to mandatory "fair share" dues paid by state employees to the union. He is also calling for major reforms in tax policy, workers' compensation, unemployment insurance and the state's tort system. Suffice to say, this is the most comprehensive, aggressive agenda Illinois has seen in decades.

Now, we have previously seen grand plans put forth by governors and it's safe to say that nobody ever gets all that they want. In Illinois, long-time Democrat leaders — Senate President John Cullerton and Speaker Michael J. Madigan — control both chambers of the legislature and have years of experience dealing with Governors. Games will be played and lessons will be learned. What Illinois voters want is for both parties to work together.

Governor Rauner challenged the General Assembly in his budget address by saying it's time to "make choices based on what's best for the next generation, not the next election. This is our last, best chance to get our house in order."

The IMA agrees and looks forward to working with all parties to "think anew and act anew" as President Abraham Lincoln once opined. ■



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# National Labor Relations Board implements pro-labor agenda in 2015

*Labor Board ushers in fundamental changes favoring big labor*

**H**appy New Year from the National Labor Relations Board — Not! United States manufacturers face fundamental pro-labor changes this year that tip the organizing scales heavily in favor of labor unions. In December, the National Labor Relations Board (NLRB) implemented its expedited representation case rules — dubbed “ambush” or “quickie” election rules — to take effect by the spring of this year. These rules drastically shorten the time between the filing of a representation election petition to organize employees and the date of the election. These rules leave employers with substantially less time to present their side of the story and communicate to employees as to why they should remain union free. On the same day, the NLRB issued its awaited decision in *Purple Communications*, giving employees a new statutorily protected right to use an employer’s email systems to engage in union organizing drives and other protected concerted activity. These are bad gifts from the NLRB that keep on giving, and can’t be “re-gifted.”

On December 15, the Obama Labor Board published its final rule in the *Federal Register* which takes effect on April 14, 2015 (120 days after publication). In a nutshell, the rules have the effect of drastically shortening the time that employers have to respond to union organizing campaigns prior to employees voting to decide whether they want to be represented by a union, thus the name “quickie” elections rules. The rules do this by shortening certain procedural time deadlines and also limiting the opportunity for a pre-election hearing and the filing of

briefs on commonly litigated pre-election issues such as the appropriateness of the unit, and voting eligibility. As a result, the new rules allow for a representation case election to be held, theoretically, in as little as 17-19 days, or less if a union waives its rights to possession of the voting list for 10 days prior to the election. This is less than half of the standard 42 day campaign period under the current rules. While it can be realistically anticipated that elections will normally be held between 21-24 days after the petition filing, the net effect of the rules is to drastically limit the amount of time that the employer has to communicate its union-free message to employees, making it much easier for unions to organize employees.

On the same day that it

announced its final rules, the Board issued its decision in *Purple Communications*. This game changing decision allows employees who have access to the employer’s email systems to use that same email system to engage in union organizing on non-working time, and makes employer policies that prohibit employee use of email systems on non-working time presumptively unlawful. This decision and the quickie election rules are a big double dose shot of Vitamin B-12 into Big Labor’s corpus!

## Quickie election rules

The quickie election rules are detailed and complex. They are set forth in 14 pages of the *Federal Register*, along with 168 pages of

see **NLRB** page 8



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explanatory comments and dissent, which help explain the meaning of the rules. This section highlights the most important rule changes.

### **Petition and showing of interest**

Like the old rules, to organize employees, a union must file a representation petition, along with a showing of interest demonstrating that at least 30 percent of the employees desire to be represented by the union. The rules allow for the union to file the petition electronically, along with contact information and election details, with a copy simultaneously served on the employer. The new rules also require that the union simultaneously file its showing of interest (typically union authorization cards), eliminating the 48 hour period allowed previously. The union may file the showing of interest by hand, electronically, or by fax, with original signatures to follow within two days. The rules also direct the General Counsel to determine whether, when and how electronic signatures can practicably be accepted.

### **Notice of election and notice of hearing**

The Region will also serve a copy of the representation petition on the employer, along with a Notice of Hearing and Notice of Petition for Election. Within two business days, the employer must post the Notice of Election in a conspicuous place and send it electronically to employees if electronic communications are customarily used. A failure to post is objectionable conduct and may be grounds for setting aside the election.

### **Pre-election hearing date and statement of position**

The new rules contemplate that a pre-election hearing will be held 8-9 days after the election petition has been filed and a Notice of Hearing has been served on the parties. Unlike the current rules, the new rules require that the employer file a Statement of Position by noon the

day before the preelection hearing is set to open, and serve it on all parties. The employer must set forth its position on whether the petitioned-for bargaining unit is inappropriate, what unit would be appropriate, what employees groups must be included or excluded from the unit to make it appropriate, any voter eligibility issues, and all other issues it intends to raise. The rules provide a party shall be precluded from litigating any issues not raised in the statement of position. At the same time the employer must provide the identities of the employees in the unit sought by the union, the employees it contends should be in the unit, and the work locations, job classifications, and shifts of those employees.

### **Limited nature of the pre-election hearing**

The new rules make clear that the Regional Director is to quickly determine whether the Board has jurisdiction, whether a question concerning representation exists, and whether an appropriate unit exists. If a question concerning representation exists, the Regional Director is to issue a Decision and Direction of Election. The rules also make clear that the Regional Director has authority to direct an election, without a pre-election hearing, even though there may be a dispute over voter eligibility and the inclusion or exclusion of certain employee groups, if a question concerning representation exists.

While the parties have a right to appear at a pre-election hearing and introduce evidence of "significant facts" that support a party's contention and are relevant to the existence of "questions concerning representation," the hearing officer may reject evidence not probative of this issue. The hearing officer has discretion to dispense with a full hearing on issues deemed irrelevant, only giving the employer an opportunity to present its position with an offer of proof. Once a question concerning representation is found, a decision should issue and an election should be directed. The Regional Director retains the authority and discretion to resolve issues of individual eligibility, and inclusions to or

exclusions from the unit, through the Board's regular challenged ballot process and post-election hearing. Post hearing briefs do not have to be allowed, and the hearing may be closed with oral argument only.

### **Decision and direction of election and notice of election**

The Direction of Election shall issue as soon as possible, perhaps even the same day, and shall be transmitted to the parties electronically if possible, by fax, or by overnight mail, and include the election details such as the dates, times, and locations of balloting. The Board eliminated the 25 day waiting period before conducting the election. A Notice of Election will also issue, and this must be posted in the usual conspicuous places at least three working days before the election, and if customary to do so, distributed electronically to employees.

### **Voting list**

The Employer will also be ordered to produce the voting eligibility list, also known as the "Excelsior" list, two business days after the Direction of Election. The new rules require that the employer, at a minimum, provide the following private information about employees: full name, home address, and if available personal email, and home and mobile telephone numbers. This leaves open the possibility that the employer may have to provide work email addresses and telephone numbers. The employer must file the list with the Region electronically, in a searchable format if "feasible." The union is entitled to the voting list at least 10 days prior to the election, although this requirement can be waived by the union, further shortening the time between the filing of the petition and the election date.

### **Purple communications and employee email use**

The Board's decision in *Purple Communications* is equally troubling for employers. The Board overruled the case of *Register Guard*, which had held that the employer could prohibit non-work use of company email for any purpose. In *Purple Communications*,

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# Handling an EEOC charge—Part I

*The best defense is a good offense: Keys to defending an EEOC charge before it is filed*

It is one of the most dreaded letters an employer can receive: notification that an employee or former employee has filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). If not handled properly, a charge can lead to a lawsuit in federal court costing hundreds of thousands of dollars. However, an EEOC charge can be handled efficiently and effectively if the company is prepared to do so before the charge is ever filed.

## The EEOC

The EEOC is a government agency that enforces the federal laws that make it illegal to discriminate against a job applicant or an employee because of a person's race, color, religion, sex, pregnancy, national origin, age, or genetic information. The EEOC also accepts charges that a person was discriminated against because they complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

In 2013 (the last year where statistics are available), more than 93,000 charges were filed with the EEOC nationwide. More than 4,700 of those charges were filed in Illinois. During that year, the EEOC recovered more than \$370 million for employees claiming discrimination. These are numbers employers cannot ignore.

## Keys to a good offense

Most employers believe that the time to defend a discrimination charge only begins when the charge is filed. Although your active defense starts at that time (and will be discussed in the next issue of *The Illinois Manufacturer*), what many employers miss is that a good "offense" can start before a charge is

filed and can greatly improve your chances of defending against a charge of discrimination. This offense comes in different forms, many of which are easily implemented and of low cost to employers. This offense is what will make your defense of a charge more successful and less costly in the long-term. Frankly, a good offense will likely result in many fewer charges being filed.

The first key to an offense is training. A good coach would never send a team onto the playing field without proper training, and the same holds true for a good employer. It is important for human resources professionals as well as supervisors and managers to be trained with respect to Illinois and federal employment laws (including the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act,

the Age Discrimination in Employment Act, the Equal Pay Act, and the Genetic Information Nondiscrimination Act). When issues arise with any of these topics, a human resources professional must know how to handle it while being compliant with the law. Moreover, supervisors and managers must understand their role in complying with these laws. Suspect employment decisions that lead to a discrimination charge are sometimes handled by employees who do not know or fully understand these laws and the implications of their decisions. Many in-house and outside labor and employment counsel can offer training in this area. Take advantage of this service to help assure that your team is making sound decisions that are lawful and in the best interests of the company.

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## EEOC CHARGE

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The second key to a good offense is documentation. Documentation, documentation, documentation! This word cannot be stressed enough. As soon as a charge is filed, an employer and its attorneys will look to see exactly what happened that brought about the charge. The only way to present a full and credible position to the EEOC is if enough documentation exists to create this picture. The only way the EEOC can dismiss a claim is if there is enough evidence to show that the employment decision at issue was based on a legitimate non-discriminatory reason.

Human resources professionals, managers, and supervisors need clear direction on what to document. If an employee is disciplined, there should be a document in the employee's file that notes the date of discipline, describes the reason for the discipline, what the discipline was (warning, suspension, termination, etc.), what is expected of the employee in the future, and the consequences if the employee fails to improve his/her behavior. Finally, any evidence of the employee's transgressions should be included in the discipline. The employee should sign this document

once it has been explained to assure they understand the punishment, the reason, and what is expected of them moving forward.

For example, if an employee is terminated for attendance reasons and files a charge alleging discrimination, this charge can be dismissed if the employer can give the EEOC all of the documents reflecting the real reason for the termination. If an employee is absent, comes to work late, or leaves work early, every occurrence of this should be documented as well as whether the leave was approved or not.

The final key to a good offense is consulting someone who is knowledgeable in these matters before making any decisions, especially termination decisions. It takes a couple of minutes to call in-house or outside counsel to have a fresh set of eyes and ears assess a situation. It may be difficult for a human resources professional, supervisor, or other type of manager to be completely objective when making such critical decisions.

### Consequences

Failing to take measures to achieve a successful offense may lead to a poor defense of a charge before the EEOC; and these failures can be very costly.

In December 2014, an Illinois storage container manufacturing

company agreed to pay \$418,000 to settle EEOC charges alleging violations of the Americans with Disabilities Act by refusing to engage in an interactive dialogue with disabled employees to find reasonable accommodations, and retaliating against those who requested accommodations or complained about discrimination. In this case, training regarding the Americans With Disabilities Act, documentation of any conversations concerning requests for accommodations, and a quick call to legal counsel to discuss the requested accommodations could have gone a long way in potentially avoiding this charge by the EEOC, as well as a \$418,000 settlement.

Also in December 2014, the Justice Department filed suit against the Chicago Board of Education alleging that the board discriminated against pregnant teachers. After two teachers filed charges with the EEOC, the EEOC performed an investigation and found reasonable cause to believe discrimination occurred. As this case was just filed, there is no conclusion yet.

However, assuring that decision-makers were experienced with Title VII, documenting that the reasons for employment actions were not related to their pregnancies, and discussing these disciplinary actions and terminations with legal counsel before initiating them may have caused the EEOC to take a different view of this situation.

### Conclusion

For an employer to have their best shot at defending a charge before the EEOC, it is important to be proactive and go on the offensive. Trying to defend a charge without evidence is difficult and can be costly. Employers should take a hard look at how their human resources departments handle these matters, and consider whether their current process needs some changes. ■

*Part II will discuss practical ways to handle an EEOC charge after it has been filed. Please note that charges of discrimination may also be filed with the Illinois Department of Human Rights (IDHR). The points herein also generally apply to charges filed with the IDHR.*

*Part II will be published in the spring 2015 issue of The Illinois Manufacturer magazine.*



**IMA'S Business Day at the Capitol**  
**Wednesday, May 6, 2015**

**Guest speaker: Governor Bruce Rauner**  
Register online today . . . visit the IMA Calendar of Events  
[www.ima-net.org/calendar-of-events](http://www.ima-net.org/calendar-of-events)



# Danger ahead: How to anticipate and avoid four common insurance coverage disputes

**W**e all know the truism: nothing is certain but death and taxes. For corporate counsel, there is one more certainty — insurance coverage disputes. Every company wants to know that the insurance coverage it paid for will be there when a claim arises. But too often, when a company submits a claim to its insurer the response is a lengthy and confusing reservation of rights letter, or worse, a coverage denial. A coverage dispute ensues.

Some coverage problems cannot be avoided. A claim may arise from unique circumstances that could not have been anticipated. For example, when two planes hit the World Trade Center, was that one occurrence or two? But other coverage disputes can be prevented with careful management of the company's insurance program and internal reporting systems well before any loss occurs.

This article addresses four common and easily avoidable coverage problems.

## **1. Errors and omissions in applications for new insurance and insurance renewals.**

The process of compiling the application for new insurance or for a renewal is fraught with peril. Depending on the type of coverage, the insured must make representations about everything from claims and circumstances that may lead to a claim to corporate transactions such as mergers and changes in control. Failure to report an existing claim in the application or renewal submission can lead the insurer to deny coverage or even seek to rescind the policy (whether justified or not). The more decentralized the company's operations, the greater the risk that something will fall through the cracks.

The best-run programs have legal

and risk professionals working together during the year to track and compile information on a current basis, rather than waiting until year-end. These professionals also recognize that it is better to be safe than sorry. Doubt as to whether to report should be resolved in favor of reporting.

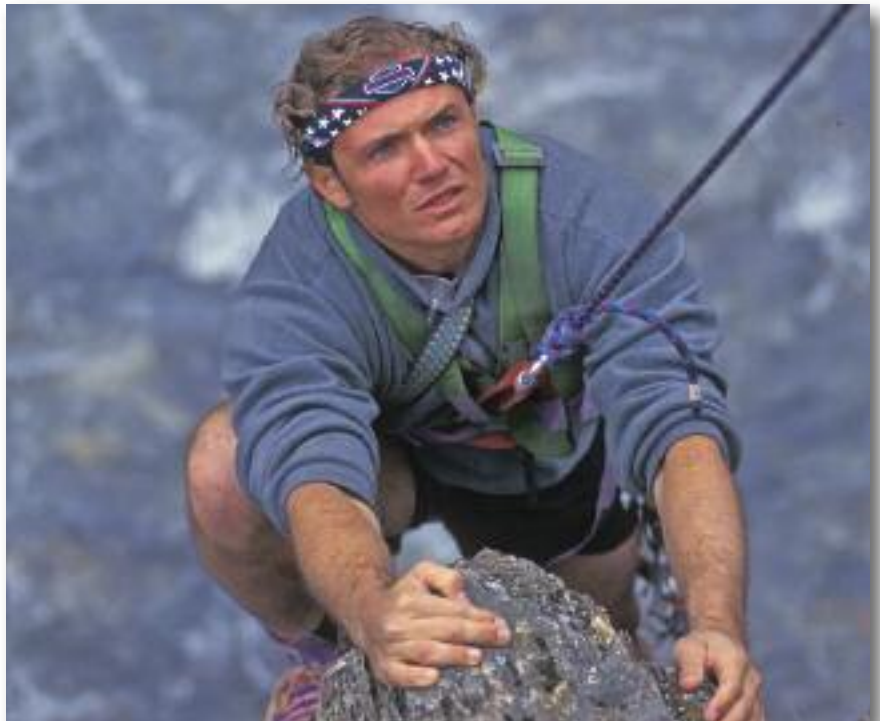
## **2. Failure to ensure that insurers are notified of business changes.**

When companies expand — whether by merger, acquisition, or in a significant product line — the insurer must be notified. The failure to give notice can result in a loss of coverage or, at minimum, a coverage fight. For example, two affiliated companies with separate operations merged in a corporate reorganization. While ultimate management would change as a result of the merger, the operations would remain separate.

The merger occurred in the middle of the policy period, and the brokers assured the companies that they could maintain their separate lines of insurance for their operations after the merger. The brokers were instructed to give notice to the insurers. Shortly after the merger, a catastrophic accident occurred at the plant of the merged company. But for the merger, the accident unquestionably was covered and there was plenty of coverage. But the merged company's excess insurers — representing \$100 million of coverage — never received notice of the merger and denied coverage. The insurers ultimately paid, but only after lengthy and costly coverage litigation.

In this case the company did the right thing — it notified the broker. But it did not follow up with the

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## DANGER AHEAD

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broker to confirm that proper notice had been given. Relying on the broker's E&O coverage is not a sound risk management strategy. The company should have required confirmation from the broker that notice was given.

### 3. Failure to confirm contractually required additional insured status.

The company may have a contractual right to be named as an additional insured under a third party's insurance, or a contractual obligation to name a third party under its own insurance. Typically, additional insured status is confirmed in a certificate of insurance. Often, the party with the right to be named an additional insured fails to (a) get the certificate each year during the contract term; (b) review the certificate to confirm that it reflects the coverage promised; and (c) confirm that the policy actually covers the additional insured.

Failing to secure and confirm additional insured status is bad for

everyone. Typically a contractual obligation to provide additional insured coverage is accompanied by a contractual indemnification obligation. While the would-be additional insured still has a claim for indemnity even if it is not named as an additional insured, that claim is worthless if the indemnitor cannot pay. Though certain contractual indemnity claims are covered under a typical liability policy, not all are. By failing to secure additional insured coverage, the indemnitor risks having to pay out of its own pocket for the defense and indemnity of another that should have been covered by insurance.

A company with rights as an additional insured should list the contracts that provide those rights, the rights that are to be provided (e.g., the types of coverage, limits, deductibles, and agreements as to priority), calendar the time for certificates to be delivered each year, follow up promptly if a certificate is not received, and review the certificate when received for compliance with the contractual insurance requirements.

### 4. Failure to give timely notice of occurrences, claims, potential claims and amended complaints.

Most companies have systems in place to ensure that they give notice of a lawsuit that has been filed against them. That is — or at least should be — the easy part. It is much harder to implement internal systems to give notice of a claim that has not yet matured into a lawsuit. Still more difficult is to implement internal reporting of an "occurrence" — an event that may give rise to a lawsuit in the future.

The process for giving notice can break down at a number of points. The people who know about the claim may fail to report it internally to those responsible for notifying the insurer. Someone may assume (incorrectly) that the claim is not covered or not serious. Some policies require notice to be given immediately; others require only that it be given before the policy expires. When notice must be given varies by policy. The consequence of giving late notice varies not only based on the policy, but also from state to state.

see **DANGER AHEAD** page 24

# There's a New Cat in Town...



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# New Illinois laws impacting manufacturers

Following is a list of laws impacting manufacturers in 2015. Not all measures approved by the General Assembly went into effect on January 1. Some pieces of legislation specify an effective date, while other bills that carry an “immediate” effective date may go into effect at other times of the year.

January 1 is the default date for a new law to become effective if it is passed prior to June 1, and if there is no specific language establishing another date. As such, a large number of laws took effect on January 1, 2015.

**Agriculture, Animals and Hunting Dairy Products (SB 3157/PA 98-0958):** Brings Illinois into line with federal U.S. Department of Agriculture standards by modifying definitions in the Grade A Pasteurized Milk and Milk Products Act, making enforcing agencies responsible to prevent the distribution of adulterated milk and milk products, and revising testing rules.

## **Business, Commerce, Labor and Licensure**

**Corporation Dissolution (SB 1098/PA 98-0776):** Provides that the dissolution of a corporation shall not take away any civil liability at the time of or after such dissolution if action is commenced within five years after the date of such dissolution.

Clarifies that this provision does not extend any applicable statute of limitations. Also provides standards of liability for directors when a corporation is dissolved.

**Workplace Safety (SB 1103/PA 98-0874):** Repeals the Safety Inspection and Education Act and the Health and Safety Act and in its place creates the “Occupational Safety and Health Act” to be administered by the Department of Labor.

**Intern Protections (HB 4157/PA 98-1037):** Adds unpaid interns to the Illinois Human Rights Act’s protections against sexual harassment in the workplace. Defines “unpaid intern” to correlate with the federal minimum wage test under the Fair Labor Standards Act.

**Pregnancy Accommodations (HB 8/PA 98-1050):** Requires employers to provide “reasonable accommodations” for all working pregnant women unless the accommodation would impose an “undue hardship” on the business.

**Equal Pay Act Jurisdiction (HB 5563/PA 98-1051):** Gives the Illinois Department of Human Rights jurisdiction to enforce the state Equal Pay Act. This duty is concurrent with the responsibilities of the Illinois Department of Labor. Allows the Department of Labor to refer a pay discrimination case back to the Department of Human Rights as long as the referral also includes potential Human Rights Act violations.

## **Crime, Courts, Corrections and Law Enforcement**

**Sealing Records (HB 5815/PA 98-0635):** Allows for the sealing of a court supervision or a conviction for a municipal ordinance violation. The intent is to allow for a cannabis or alcohol ordinance violation to be sealed in the same manner that a misdemeanor supervision or conviction for an alcohol or cannabis offense can currently be sealed.

**Juvenile Records (SB 978/PA 98-0637):** Requires the Department of State Police to automatically expunge all records pertaining to

the arrest of a minor if the arrest did not result in a delinquency petition being filed. The State would have to expunge arrests automatically when the minor turns 18 and only if the minor was not arrested within six months of the minor’s most recent arrest.

**“Ban the Box” Criminal Records (HB 5701/PA 98-0774):** Prohibits private employers with 15 or more employees from asking a job applicant about their criminal history until the applicant has been selected for an interview or, if there is not an interview, until after a conditional offer of employment is made. It has been called “ban the box” after the check box that appears on some employment applications asking if the individual has been convicted of a crime. Advocates argue that the legislation allows applicants to have the opportunity to address questions about their past criminal records in person, during an interview.

**Civil Actions (HB 5512/PA 98-1077):** An initiative of the Trial Lawyers to allow individuals who may sustain a legal disability after a cause of action accrues but before a case is filed to still bring an action.

**Electronic Legal Documents (SB 1941/PA 98-1097):** Creates the Uniform Electronic Legal Material Act. This applies to all legal material in an electronic record that is designated as official and first published electronically on or after the effective date. This is part of an effort to adopt consistent regulations regarding electronic legal documents in all states.

see **NEW LAWS** page 23





# Why hiring a military veteran could be your best business decision yet

By Lida Citroën, Principal, LIDA360, LLC

**W**ith the nation in recovery, investment in resources is growing. We see new commercial construction underway, roads and highways under repair, and consumer spending on the uptick. With all this new growth, companies are starting to loosen the stronghold on hiring freezes initiated when our economy was plummeting. Yes, as hiring managers and recruiters across the country seek to find talent, a highly untapped and ready workforce awaits employment. Currently there are roughly 163,000 unemployed post-9/11 veterans and more than 600,000 unemployed veterans overall. These individuals are the beneficiaries of more than \$130 billion of investment in training, education, and skill building from the U.S. government.

Hiring former military personnel could be the best business decision a company (and a hiring manager) makes.

## Why aren't hiring managers recruiting veterans?

There is a disconnect between veterans and civilian hiring managers, and it goes both ways. Veterans overwhelmingly leave military service unprepared and unarmed with the tools to position themselves as viable candidates to civilian companies, and hiring managers are unskilled and untrained in

how to recruit military veterans for jobs outside of service.

The challenges include:

- **Reading the resume** — Hiring managers often lack training to read and understand a military resume. What does being an E-6 mean? Did a Lieutenant Colonel in the Air Force hold more management responsibility than a Major in the Army? What does it mean that you did Command and Control Battle Management Operations in the Air Force, and how is it relevant for the position I'm recruiting for?

- **Inability to sell themselves** — In the military culture, the focus is on mission, unit, and the person next to you, not on you. Self-promotion and self-focus are unacceptable and discouraged. Therefore, when veterans leave service, they struggle when answering questions such as, "Tell me about a success you had that you are most proud of." To the veteran, this would mean being disloyal. To the hiring manager, not getting an answer is frustrating and suspicious.

- **PTSD** — Civilian media has not done an adequate job of educating the public about PTSD (Post Traumatic Stress Disorder), Traumatic Brain Injury (TBI), and the numerous other challenges former military live with after service. We intuitively believe that someone who has "seen the unthinkable" and lived in conditions of violence, hostility, and stress

for a long period of time will undoubtedly have emotional effects long after the situations change. But what does that mean for a hiring manager looking to add a new team member to their company?

- **Skills not transferrable** — Without a clear outline of which military skills translate to which civilian job responsibilities, it may be unreasonable to expect that hiring managers with no military experience can understand how someone who worked front lines in the infantry can lead their IT staff through a new project. Or, how a combat medic is qualified to hold a sales position in their pharmaceutical company.

- **Fit in the organization** — Hiring managers seek skills, experience, and talent in recruiting new employees, and they look for cultural fit as well. Each candidate is evaluated for the value they bring and can offer to new and existing teams, how well they will assimilate into the organization, and where they will lead. The perception that a military veteran is used to barking orders, meeting high-stress timelines, and putting feelings aside for execution on mission can deter recruiters from evaluating a veteran candidate.

## What can the veteran employee bring to the organization?

Veterans see their work as a career, not a job. To them, a job is



the place you show up, perform work, and earn a wage for services. A career, on the other hand, is where you commit your whole self, build a foundation of skills, talents, and experience, and add value to the organization, the mission, and the team at every step.

After years of service, sometimes multiple deployments to violent and stressful environments, and sacrifice of family and friends, veterans transition to a civilian career with little more than a week or two of preparation. It is no wonder that veterans struggle with articulating, positioning, and marketing their value to civilian employers.

I have worked with several hundred former and transitioning veterans to help them articulate their value proposition so hiring managers will be able to clearly see the benefit of engaging and hiring them. Similarly, I aid corporate recruiters and hiring teams in understanding the unique skills and attributes our former military bring to the workplace.

### **Key reasons why hiring a veteran could be your best business decision yet**

• **Problem solving** — The military teaches its personnel to think beyond what they can see, touch, and smell. The training veterans received in service is the ultimate in problem solving — anticipate and prepare for anything or the consequences could be deadly. While most veterans will not face life and death problems in their next career, they are trained to think creatively and to not be deterred by obstacles. Where their civilian counterpart might stop in the face of a challenge, the veteran will persevere until a resolution is identified. For employers that seek independent thinkers, solution-oriented team leaders, and focused employees, veterans are the ideal candidate.

• **Loyalty** — When attrition accounts for a great deal of corporate revenue loss, and the costs to replace one employee are very high, having a workforce that is selective and then loyal is of high value. Veterans committed their lives to their former employer, risking it all and sacrificing much. They are taught that loyalty is admirable and that walking away from challenge is not an option. This makes them tremendous

assets to organizations that seek leaders to help manage risk, high performing teams, and critical initiatives where loyalty and follow-through will produce valued results.

• **Trainability** — When an individual joins the military, typically at a young age, they do not enter with the training needed to perform at exceptional (and lifesaving) levels. They learn how to be an expert through the training, drills, real world situations, and those around them. When exiting the military, these same individuals are again very trainable and capable of learning new skills, talents, and abilities. This is an advantage for a company seeking to fast track the on-boarding and contribution of new employees.

• **Credentials** — After service, many veterans enter the job market with advanced credentials and clearances. For companies in industries where a background check or gov-

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Currently there are roughly  
163,000 unemployed,  
post-9/11 veterans and  
more than 600,000  
unemployed veterans overall.

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ernment security clearance — such as banking, information technology, and healthcare — are requirements, this is a direct cost savings.

• **Adaptability** — The military trains its personnel to survive in various rigorous and unpredictable environments. They are moved from location to location, often in foreign countries where rules and protocols do not exist. Military personnel are often in scenarios where they are outside the norms they understand, where everything from the language to the subtleties of cultural differences are foreign to them. The level of adaptability and survival skills necessary to stay focused on the mission and protect your assets and troops is extraordinary. This translates to adaptability on many levels in business — the veteran could be an ideal candidate for a position with vague goals and boundaries, where cross-functional objectives compete for resources, or where

global pressures require quick responses, while keeping long term vision in mind.

• **Family** — When a service man or woman deploys, they say goodbye to the support system that gives them strength. While on tour, that service person learns to rely on a new family — those serving along side. The transition to a civilian career means reconnecting with family and integrating to a new world. To veterans, this is a natural time to bond with co-workers, other veteran employees, and their community, much like they learned to do when in service.

• **Mentoring** — The day a new recruit enters the military, they are met with a peer who walks them through the process — from where to get supplies, to what to expect in boot camp and where they should sit in the mess hall. Mentoring is a huge part of the military culture and veterans carry this belief with them after service. Companies seeking team leaders and employees who will enlist support for their goals and encourage other employees are smart to hire veterans.

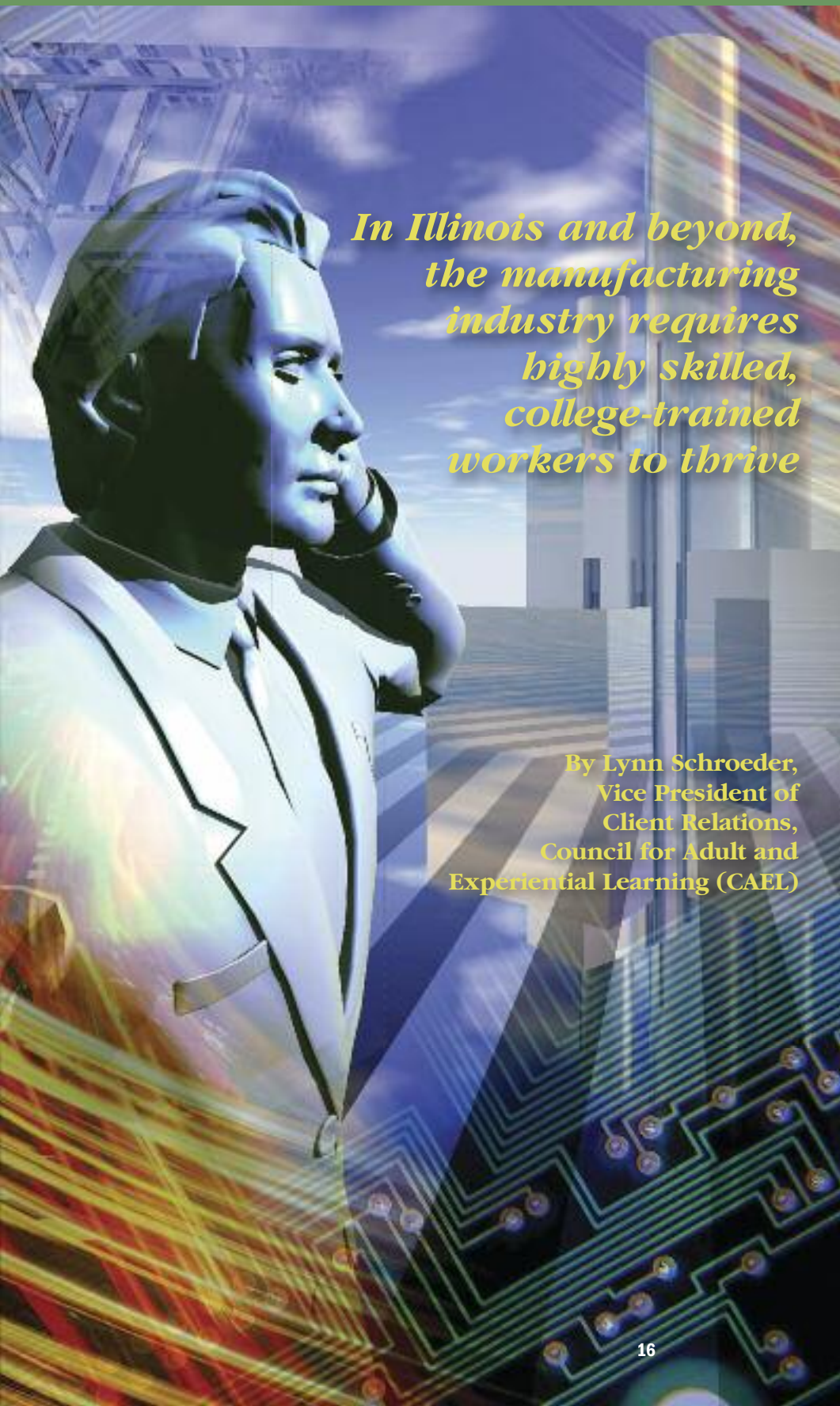
Businesses investing in human capital are wise to learn how to recruit, onboard, and retain veterans. The small investment in training a hiring and recruiting team on how to read military resumes, interview veterans, and recruit veterans online is returned in a workforce that contributes at levels that exceed expectations. ■

### **About the author**

*Lida Citroën is the author of Your Next Mission: A personal branding guide for the military-to-civilian transition and Principal of LIDA360, a consulting firm that helps create effective market positioning through the use of brand strategies. She regularly presents at conferences, events and programs, teaching transitioning veterans how to understand their unique value and market them to future employers.*

*Citroën is an active member of Employer Support of the Guard and Reserve (ESGR) and works closely with General Peter Pace's program in Philadelphia, Wall Street Warfighters Foundation (WSWF). For more information, please visit, [www.yournextmissionbook.com](http://www.yournextmissionbook.com) and connect with her on twitter, @LIDA360.*

# Advancing manufacturing through Today and into the future



*In Illinois and beyond,  
the manufacturing  
industry requires  
highly skilled,  
college-trained  
workers to thrive*

**By Lynn Schroeder,  
Vice President of  
Client Relations,  
Council for Adult and  
Experiential Learning (CAEL)**

**B**y 2020, 55 million Baby Boomers nationwide are expected to retire from their jobs leaving a massive talent shortage. Among the occupations that will be the most in-demand are those in STEM (science, technology, engineering, and math) fields, which make up the backbone of our country's manufacturing industries.

In Illinois, manufacturing has long been a critical component of the state's economy — one of the nation's largest. Filling the worldwide demand for Land of Lincoln-produced goods, Illinois' manufacturing industries represent a vital contribution to America's economic health.

The rise of manufacturing in other countries over the last several decades, coupled with America's transition into a more services-oriented economy, has sparked endless debate about the importance of manufacturing in today's nation. Does manufacturing still matter? Does *Made in America* still mean something? In short, the answer to both is an absolute yes — as America still remains the world's manufacturing leader.

## **American manufacturing — An overview**

The importance of manufacturing in America's history cannot be overstated. From the textile industries of New England, to the auto and rubber industries of the Midwest and the steel industry in Pennsylvania, manufacturing has played a critical role in our nation's economic and social development.

Since the postwar 20th century, domestic and international demand for *Made in America*-manufactured goods resulted in a mutually-beneficial relationship for employees, employers, and the nation as a whole, contributing to the United States' position as the world's economic leader. That contribution still holds true. In 2013, manufacturers added \$2.08 trillion to the American economy, up from \$2.03 trillion the prior year, and representing more than 12 percent of the nation's gross



# education and innovation:

domestic product. What sets apart today's manufacturing industries is that a greater number of high-skilled workers are needed — the kind whose education doesn't end at the high school level.

Machinists, autoworkers, welders, inspectors, assemblers and 3-D printers are expected to possess a high degree of STEM knowledge. Long gone are the postwar-era days when workers didn't need college experience.

For highly skilled and trained individuals seeking employment in manufacturing, the rewards are significant. According to the National Association of Manufacturers, the average manufacturing employee's salary was \$77,506 in 2013 — almost \$15,000 more than the average in all other industries. For employers, the benefits of having a highly skilled workforce means increased workforce productivity which leads to a stronger bottom line.

In the Chicago-area, these skilled workers are the key to reviving a region that once was a stronghold for manufacturing.

## **A manufacturing rebirth — Millennium Reserve**

Chicago is best known for its breathtaking architecture and expansive parkland along Lake Michigan. What it is becoming less known for is its manufacturing presence.

In an effort to revitalize the Calumet region of Chicago, an initiative called the Millennium Reserve was developed to transform the region into an engine of manufacturing activity. Along with generating economic growth, the Millennium Reserve is dedicated to maintaining the vast natural landscape of the region, and promoting the awareness of environmental sustainability among the region's residents.

Established in 2012 by Governor Quinn, the Millennium Reserve encompasses 210 square miles from downtown Chicago, to the Indiana

state line on Chicago's southeastern border, and to the city's southwest suburbs. More than one million residents live within the Reserve and its 15,000+ acres of parks, trails, wetlands, and forest preserves.

For areas like the far Southeast Side and south suburbs, which lie in remote areas away from the downtown Chicago core, the Millennium Reserve project is a welcome sight.

"Primarily, the Millennium Reserve was designed to pay attention to the redevelopment in the area south of the Loop, especially the Southland" says Reggie Greenwood, Director of Economic Development for the Chicago Southland Economic Development Corporation and the South Suburban Mayors and Managers Association. "It is a collection of environmentalists, economic developers, transportation representatives and non-profits trying to bring a new approach to redeveloping an area that has been overlooked."

Taking its name, in part, from the city's Millennium Park, the Millennium Reserve's members witnessed how that innovative urban space transformed downtown Chicago, attracting tourism and investment into the area.

"The region was looking at the name as an extension of what was going with Millennium Park," says Mollie Dowling, Executive Director at OAI, Inc., a non-profit workforce development organization. "With all of the ecological resources in the region, the state wanted to make this area — which has suffered a lot of disinvestment over the years — more of a destination than it has been in the past."

A centerpiece of the Millennium Reserve is the Calumet Green Manufacturing Partnership (CGMP), which is made up of over 60 employers, four colleges (Daley College, Moraine Valley College, Prairie State College, and South Suburban College), economic devel-

opment organizations, the Chicago Cook Workforce Partnership and other entities from the private, public, and non-profit worlds. CGMP works with regional technical colleges to help train prospective workers for industry careers that emphasize STEM skills.

Students receive industry-recognized college certifications upon successful completion of the training, which last between 3-6 months. Additionally, CGMP has partnerships with Calumet region high schools to create internships for students and recent graduates interested in high-paying manufacturing careers.

"This is really like a three-legged stool in that you have to ask, 'How do you connect to employers, to connect to colleges, to connect to people?'" says Greenwood. "The colleges have to do the training, and the training has to be informed by employers, so that their training is relevant to the skills employers need. And then you have to be able to attract people into that."

So far, CGMP has placed more than 150 individuals into jobs in manufacturing. It is currently targeting over 250 individuals for enrollment in training programs at the partner colleges, and is hoping to place — in the near term — at least 100 more individuals in manufacturing careers.

Efforts like the CGMP could not come at a more urgent time. According to a 2014 report by the Brookings Institution, manufacturers have a more difficult time filling STEM positions than any other type of business. This is a real concern — especially in Illinois.

Despite the loss of Illinois manufacturing jobs over the years, Illinois has the fifth-largest number of manufacturing employees in the nation and manufacturers are still among the top three business employers in the state — according to the Census Bureau. For the Calumet region,

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## INTO THE FUTURE

Cont. from page 17

which experienced job disinvestment going back to the 1980s steel industry decline, CGMP represents a golden opportunity for a manufacturing renaissance.

"There's been a whole marketing process involved in trying to engage the community to help promote the idea that careers in manufacturing now exist," says Greenwood. "People have forgotten that these careers are there."

The CGMP was recently named one of 12 "Manufacturing Communities" by the Commerce Department-led Investing in Manufacturing Communities Partnership (IMCP). Additionally, the region attracted the Digital Manufacturing and Design Innovation (DMDD) Institute, a Defense Department-backed, public-private partnership that conducts high-tech research in advanced manufacturing.

The efforts of CGMP, on behalf of the Millennium Reserve, represent the kind of innovative approach to economic development that finds support with workforce planners. They promote economic growth and advance the environmental sustainability of surrounding areas, making it a win-win — particularly for Illinois.

The Millennium Reserve worked with the Council for Adult and Experiential Learning (CAEL) to create the study Manufacturing and Freight in the Millennium Reserve: Existing Workforce Assets and Opportunities for a More Coordinated System. The study focused on manufacturing occupations, education and training availability and offered regional recommendations for enhanced collaboration. More about the CGMP initiative can be found at [www.cgmp4u.org](http://www.cgmp4u.org).

### CHAMP Career Action Platform — A winning effort in Colorado

Much like the employees working in the Millennium Reserve, Colorado's manufacturing prowess is made possible by a workforce equipped with STEM knowledge.

Not only was Colorado ranked by the website Business Insider as having the nation's number one

economy, the state is also at the forefront of American manufacturing, with more than 5,900 manufacturers representing an industry worth more than \$20 billion.

"Today's manufacturing companies know how valuable a skilled employee is, and work hard to make sure that their employees' skills stay up to date, and that their occupational needs are met," says Bitsy Cohn, Director of Credit for Prior Learning for the Colorado Community College System (CCCS).

For Coloradans, their access to manufacturing positions is getting a boost by a new online career website — the Colorado Helps Advanced Manufacturing Program (CHAMP) Career Action Platform.

Launched this past October, the CHAMP Career Action Platform (located at [MfgWorksCO.com](http://MfgWorksCO.com)) is administered by CCCS and supported by a grant from the U.S. Labor Department. The interactive and data-rich platform is easy to navigate across different platforms (i.e. desktop computers, tablets, and mobile phones) and provides users with career maps, career pathways, and detailed information about different types of advanced manufacturing jobs in Colorado.

The site also provides information on salary expectations and the amount of education required for roles in advanced manufacturing. In addition, the site offers background information on some of the biggest manufacturers in Colorado, with links to each company's home page and career section.

A unique resource of the site is how it helps users understand how to get into the industry, make a lateral move, or move up the career ladder. Another important aspect of the site is the "Industry Crosswalk" feature that shows users how knowledge they already have relates to advanced manufacturing jobs.

What's more, the site has a section for veterans who want to transition from active duty to manufacturing careers. It includes a checklist for veterans to help them make the move into manufacturing careers. It also provides a link to the Industry Crosswalk tool, where veterans can key-in their military job codes and — via an on-screen visualization instrument — discover how the knowledge they gained from their military experience translates into

different manufacturing jobs.

Along with information about job types, company types, and employers, the CHAMP Career Action Platform lists Colorado colleges that offer credentials and certificates for manufacturing careers. Users will find information about educational options that include online courses and prior learning assessment services. This career action platform is one of several designed and built by CAEL to link learning and work. This is essential to CAEL's mission to make it easier for workers to achieve meaningful learning, credentials and employment. Similar to the Millennium Reserve, the tool promotes social responsibility, and includes a section highlighting the social, economic and environmental good Colorado manufacturers are doing.

Resources like the CHAMP Career Action Platform come at a time when workforce demand in the Centennial State is high. From June 2013 to June 2014, Colorado added nearly 3,000 manufacturing jobs. This is a 1.3 percent increase — higher than the national manufacturing jobs increase of 1.1 percent for the same period. It marks a fourth straight year of increase, and according to the University of Colorado-Boulder Leeds School of Business, manufacturing job growth is expected to rise throughout 2015 as well.

With the growing employment demand, the CHAMP Career Action Platform is ready to help Colorado manufacturers meet their critical workforce needs. "It's a new day for manufacturing in Colorado and anyone interested in being part of one of today's hottest and most interesting fields should think about advanced manufacturing," says Cohn.

### College credit for skills learned outside of the classroom

It's no secret that the jobs of the future require workers to have education beyond high school. Research shows that by 2020, 67 percent of the workforce will need a postsecondary credential. However, if current levels persist, less than half of adults in the state will have the education they need.

As a way to plug the impending educational gap in Illinois and nationwide, employers have an opportunity to use prior learning assessment (PLA) to help individuals

see **INTO THE FUTURE** page 24



# Developing your intellectual property strategy

**Y**ou started your company with an innovative gadget developed in your own garage. From that simple beginning, you have been able to establish your own company, hire employees, and are now manufacturing a line of related products. So far, your business is a success and you hope to build on the momentum. You know you should be worried about protecting your products with patents and trademarks, but unfortunately you cannot spare the resources yet to bring inhouse counsel on board to advise you as to intellectual property rights. What issues should you be aware of that might affect your company's assets? This article outlines a number of strategies that you can consider implementing to protect your company's rights and offers some suggestions as to when you should seek the assistance of counsel.

## Patent issues

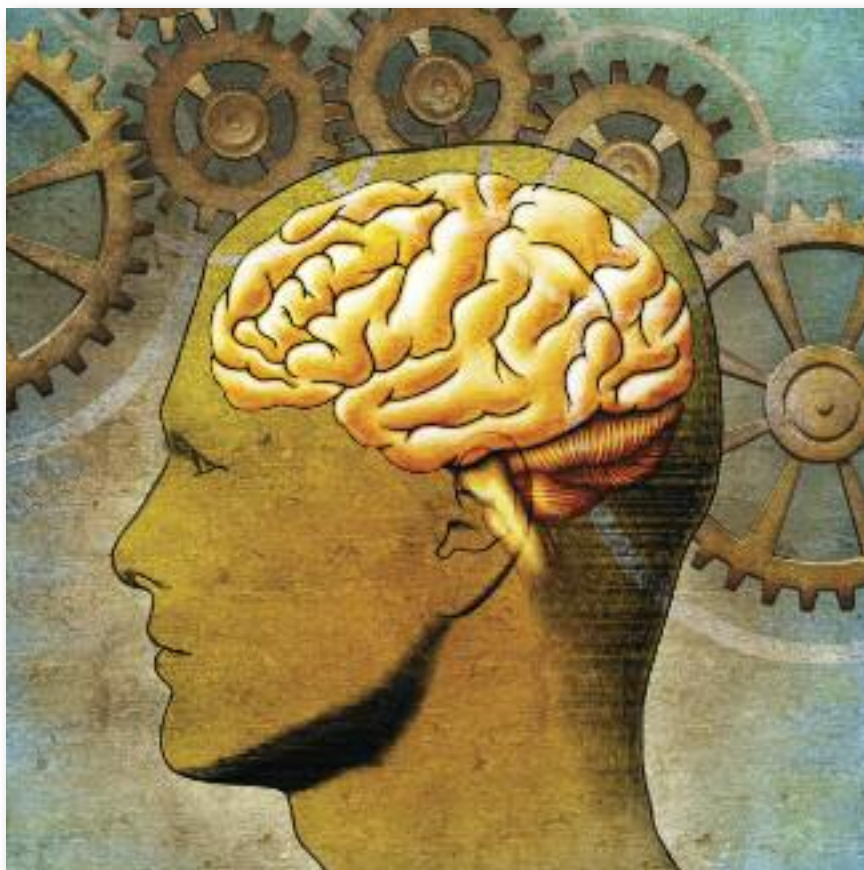
**Perform a patent search.** Before launching a new product, perform a **freedom to operate or clearance search** to determine whether the product will infringe a third party's patent rights. Such a search can be performed by any member of the public on the U.S. Patent and Trademark Office's website at [www.uspto.gov](http://www.uspto.gov) or by hiring a search firm that specializes in conducting such searches. Having a firm perform the search is more expensive, but it may be money well spent. Such firms often provide more thorough search results due to the expertise of their searchers and yield broader results due to the scope of the search. The patents and other references located during the search should be evaluated by a patent attorney who can advise you on whether any of the references are problematic, i.e., present an infringement issue. Not only does such a search help to identify any potential infringement issues, but also allows a

company the opportunity to design around any problematic patents before investing in a new product.

**Time is of the essence.** The United States is now a **first to file country**, meaning that a patent is awarded to the first individual who files an application for an invention, not to the individual who invented the invention first. (This change in the law took place with the enactment of the America Invents Act.) Thus, time is of the essence in getting patent applications prepared and filed. Although an inventor can prepare and file his/her own application (see [www.uspto.gov/inventors/prose.jsp](http://www.uspto.gov/inventors/prose.jsp)), the U.S. Patent Office recommends seeking the assistance of a registered patent attorney in preparing an application. To minimize the time needed for drafting an

application, it is beneficial to initially provide the attorney with a thorough disclosure of the invention. This disclosure should detail the problem or shortcoming in the prior art, explain how the invention solves the problem or meets the shortcoming, and provide a detailed explanation of how the invention works, accompanied by drawings. A more complete initial disclosure will help to keep the overall cost of preparing the application down and will lead to a more thorough application in a shorter period of time.

**File before disclosing.** Some countries outside of the United States have an absolute novelty requirement, which means that in order to preserve patent rights in those countries, a patent application *see IP STRATEGY page 24*



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# Natural gas customers: Are you considering price protection options for 2015?

**N**ovember 2014 set a record as the eighth coldest since 1950, breaking many low temperature records across the Midwest and East.



November deviation from normal

Natural gas customers who have not procured gas for the coming winter may want to consider price protection options (via fixing your NYMEX component or regional delivery point pricing) before a change in weather forecasts in late December or early January potentially rally the NYMEX and regional gas points once again.

With additional volatility slated throughout the upcoming months, we at Constellation want to ensure you are prepared with the latest trends to help you make smart energy decisions for you and your company. Here is some information to help drive your strategy.

- From a 4th quarter low on October 27th of \$3.55/MMBtu, NYMEX rallied \$0.99 cents (or 28 percent) to \$4.54/MMBtu by November 10th, pulling back but returning to \$4.53/MMBtu on November 26th. Since peaking on November 26th, NYMEX sold off over the next seven trading days to close at \$3.65/MMBtu (a -20 percent price retracement).
- Volatility was driven due to the arrival of the coldest November

since 2000. However, a change in patterns resulted in a much warmer start to December than normal.

- The cold peaked in the 3rd week of November (as we all remember!) and this resulted in a record-tying withdrawal from storage of -162 Bcf for the week ending November 21st, tying another previous record for all-time high withdrawal, which was -162 Bcf on November 28th, 2013.
- For those residents in the Southeast, cold temperatures spurred higher electric heating load, which was met by a week-over-week increase in gas-fired generation

demand of 23 Bcf for the week ending on November 21st.

- These storage withdrawal numbers are more typical of the months of January and February and not November, which saw temperatures averaging between 5 to 8 degrees below normal across much of the Midwest.

As the NYMEX chart on page 27 illustrates, prices declined in October but rallied in November as the cold weather moved in. It is worth noting that the bigger move has been in the prompt month contracts (November and December) along with other winter months through March, as a colder than

see **OPTIONS** page 27



**Constellation** is the preferred energy provider for IMA members. For more information, visit [www.constellation.com/IMA](http://www.constellation.com/IMA). Or, you may contact Constellation's Richard Cialabrini at 888-312-1563 or email [Richard.cialabrini@exeloncorp.com](mailto:Richard.cialabrini@exeloncorp.com). Author: Keith Poli, Constellation.

the Board created a presumption that employees who have access to an employer's email systems have a right to use the employer's email systems to engage in union activity and protected concerted activity during their non-working time. This new rule applies only to employees who already have access to an employer's email systems in the course of their work, and applies to both non-union and unionized employees.

The Board stated that an employer is free to adopt limitations and restrictions on email usage, such as the size of attachments, video attachments, etc. Furthermore, the Board stressed that an employer has a right to monitor its email systems, and enforce its policies as long as it does so in a nondiscriminatory manner. The Board also noted that an employer may be able to justify a total ban on the non-work use of email, if the employer can show "special circumstances" which make the ban necessary, such as production or discipline problems. The Board expressly cautioned that such circumstances would be "rare." The rule is to be applied retroactively to all employers.

The Board also noted that the decision was limited to employees who already have access to the employer's email systems in the course of their work, and does not compel an employer to grant access to other groups of employees. The Board also warned that its decision did not address access to other electronic communication systems, such as the internet and social media (such as Twitter, Facebook, or Instagram), and that non-employee use of an employer's email systems can still be prohibited.

### **Peril facing employers**

There is an increased peril of unionization facing employers because of these two new developments. The peril is caused, in part, by depriving the employer of adequate time to effectively deliver its' union free message to employees. It is also caused by depriving employees of precious time during the election period to meaningfully consider

the issues to make an informed vote. As is noted by the dissent, the Obama Labor Board's majority has developed a regulatory scheme of "vote now, understand later," which is contrary to the Act and congressional intent, and which also restricts free speech rights of the employer and employees.

### **Establishing a union free foundation and preparing for the ambush**

Any game plan to deal with the quickie election rules will be weak without first establishing a proper union free foundation. Prudent employers will periodically conduct human resources audits to ensure compliance with laws and regulations, to conduct union vulnerability assessments, and to ensure there is a good foundation to support a continued union-free environment. Positive employee relations depend upon effective programs that 1) bolster management credibility, 2) positively communicate employer policies and compensation/benefits, 3) channel and resolve workplace disputes quickly and fairly, and 4) validate and reward employee performance. These first steps would include dusting off and revising employee handbooks, including no-solicitation/no-distribution policies, electronic communications and social media policies, bullying and harassment policies, etc., reviewing orientation and exit programs, management and employee training programs, employee communication vehicles such as email alerts and telephone "hot-lines," in-house grievance resolution procedures, and compensation surveys and studies.

It is also critically important to train supervisors in fair and consistent enforcement of policies, the identification and proper handling of protected concerted activity under the NLRA, and the early warning signs of union activity, including dealing with union authorization cards. Supervisors must be trained in the identification and proper handling of "salts,"\* union corporate campaign tactics, and techniques to prevent union influence through vendors' employees and temporary employees. Supervisors must also be trained in advance on how to properly and lawfully communicate the employer's union free message about why employees do not need a third party to be treated fairly in the

employer's workplace.

Because of the quickie election rules and email communications, and the rapid clip at which an election petition will be processed, an employer's ability to respond quickly will be critical. The employer should prepare, in advance, its statement of position addressing anticipated legal issues, including unit and eligibility issues, and the identification of managers, supervisors, and confidential employees who must be excluded from any bargaining. This includes an analysis of the possible and optimum unit configurations, and the traditional community of interests shared by employees in those possible bargaining units, including preparing arguments and gathering "overwhelming" evidence as to why the employer's proposed units are appropriate, and the union's proposed units, including "micro units," are not. .

The employer should also identify and train, in advance, its union free rapid response team, including an electronic communications team. Because time frames will be very short and compressed, these rapid response teams must be established and trained with a clear understanding of their roles in the campaign. Campaign materials, in hard copy and electronic form, including union card materials, "campaign tool kits," "boxed campaigns," and one-on-one communications strategies must also be readied in advance. An employer's current employee data bases should be examined, and analyzed strategically, with an eye as to what must be produced to the NLRB and union, and how they most effectively may be used by the employer.

### **Conclusion**

The Board's new ambush elections rules and law governing email communications present employers with big challenges in 2015. With a short period prior to the rule taking effect, the challenges are daunting, but doable. Prudent employers will not be cowed, but will embrace the challenges with dogged determination. ■

*\*"salts"—covert or overt paid union organizers also on the company payroll.*



## NEW LAWS

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### Energy/Utilities/Environment

**Demolition Debris (HB 4606/PA 98-1130):** Establishes that new demolition debris waste sites in downstate areas do not need a local government hearing.

**Non-Natural Cosmetic Ban (SB 2727/PA 98-0638):** Establishes a ban in Illinois on “micro beads,” which are small plastic beads often used in cosmetic products like exfoliating face washes. Concerns have been raised that these beads are getting into the water supply and releasing toxic chemicals like PCBs, which are consumed by wildlife, and then in turn, consumed by humans. Over-the-counter drugs containing synthetic plastic micro beads cannot be sold in Illinois after December 31, 2019.

**Lead Abatement (HB 5410/PA 98-0690):** Addresses regulation and enforcement of the Lead Poisoning Prevention Act with regard to licensure, fines and penalties, billing the Department of Healthcare and Family Services (DHFS) for lead testing and evaluation of Medicaid-eligible children, reporting of lead-poisoning test results to the Department of Public Health (DPH), and other changes.

**Variance Petition Requirements (SB 2657/PA 98-0822):** Requires petitioners, instead of the Illinois Environmental Protection Agency, to send notice of variance petitions to local governing entities. In other similar environmental proceedings this is already standard, and this simply makes the variance process consistent with other similar procedures.

### Ethics and Transparency

**Marijuana and Epilepsy (SB 2636/PA 98-0775):** Adds seizures (including those characteristic of epilepsy) to the list of “debilitating medical conditions” that medical marijuana may be used to treat. Also allows the Illinois Department of Public Health (DPH) to adopt rules authorizing “other” minors with medical conditions covered by current law to become registered users.

The stated purpose of this legislation was to authorize the use of CBD Oil for children with Epilepsy

or conditions that cause seizures. Limits cannabis use by minors (with parental consent) to only infused forms.

However, it also broadens use by minors by allowing DPH to adopt rules authorizing “other” minors with medical conditions covered by current law to become registered users.

### State Government, Insurance and Regulation

**Payroll Card Regulations (HB 5622/PA 98-0862):** Establishes new regulations for the use of payroll cards by employers. Imposes new requirements on employers that choose to pay employees via a payroll card, including requirements to ban some fees, disclose permissible fees, obtain written consent, offer other payment alternatives, and ensure that employees can access their entire wages for free once per pay period and obtain free account balances and transaction histories.

Requires payroll cards to allow two declined transactions per month, but allows commercially reasonable fees for each declined transaction thereafter. Also requires the employee to have unlimited telephone access to obtain account balances at any time without incurring a fee.

**Insurance Code (SB 3324/PA 98-0978):** Makes changes to the surplus lines article of the Insurance Code. These changes bring Illinois statutes into compliance with federal laws, close a tax loophole and make other technical changes.

### Taxes and Fees

**Medical Isotope (HB 4687/PA 98-0728):** Reduces the fees for shipping cobalt-60, a medical isotope, less than 100 miles. For trips less than 100 miles, the fee will be reduced from \$2,500 per truck to \$1,500 for the first truck and \$750 for each additional truck in the same shipment. Cobalt-60 is used mainly in the cleaning and sterilization of medical supplies. Proponents say the current fees make shipping cobalt-60 prohibitively expensive.

**Tax Refund Rules (HB 5564/PA 98-0925):** Requires the Department of Revenue to develop rules on applying a refund due to estimated tax liabilities. Currently, the Department may do this, but it is not a requirement. The bill allows a taxpayer to apply a refund due to their estimated tax payment. A tax-

payer would make the election to apply the refund to their estimated taxes on their return.

**Visa Waiver Fees (SB 3440/PA 98-1006):** Authorizes the Center for Rural Health to collect fees for administering the J-1 Visa Waiver Program (for international medical graduates). The fees shall be deposited into the Rural/Downstate Health Access Fund and used to fund the J-1 Visa Waiver Program. It also authorizes the spending of funds in the Rural/Downstate Health Access Fund on programs for the medically underserved.

**Retailers Occupation Tax (HB 3885/PA 98-1058):** Makes changes with regard to the disclosure of return information as it relates to the Retailers' Occupation Tax Act, specifically allowing limited amounts of this information to be shared with all municipalities. The information would include a business's name, address, the net revenue distributed to a municipality requesting the information as it directly relates to their share of the various sales taxes, and a listing of all businesses within the municipality by account identification number. Currently this information can only be shared with certain municipalities.

### Transportation, Infrastructure and Vehicular Regulation/Safety

**Natural Gas Vehicles (SB 3574/PA 98-1029):** Allows a vehicle that uses natural gas as a motor fuel to exceed weight limitations for other trucks by 2,000 pounds. Does not allow this exception for vehicles using interstate highways or on roads or bridges in the state with a posted weight limit.

**Vehicle Code Amendment (SB 1898/PA 98-0519):** Amends the Illinois Vehicle Code. Increases the minimum mandatory coverage amounts for liability insurance policies in this State and increases the amounts sufficient to satisfy a judgment following a motor vehicle accident as follows: bodily injury or death to any one person from \$20,000 to \$50,000; bodily injury or death to more than one person from \$40,000 to \$100,000; and injury or destruction of property of others from \$15,000 to \$40,000. ■

Source: Illinois Senate GOP Website:  
[www.senategop.state.il.us/News/RecentNews.aspx](http://www.senategop.state.il.us/News/RecentNews.aspx)

## DANGER AHEAD

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Amended complaints and counterclaims present special challenges. Even if an original complaint does not “plead into coverage,” an amended complaint may do so. Someone within the company — not just outside counsel — must be charged with reviewing every

amended pleading for changes that may implicate coverage.

The company can minimize the risk of late notice by negotiating policy language that modifies the policy’s form notice provision. For example, alternative policy language could require notice to the insurer only within a reasonable time after the policyholder’s risk manager (or another executive) becomes aware of the claim, the potential claim or suit. In all cases, the company must

implement a system that requires prompt internal reporting to the legal department and risk management of claims, potential claims, and events that may give rise to a claim.

Warren Buffet said “Risk comes from not knowing what you’re doing.” If you know what you are doing before a loss, you will minimize the risk of forfeiting coverage when a loss occurs. ■

## INTO THE FUTURE

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gain college credit and credentials for learning gained outside of the classroom.

The PLA method recognizes that in addition to traditional classroom learning, college-level knowledge can also be gained through experiences like previous employment, military service, volunteer activities, or participation in independent online study. College-level learning can be evaluated by a college faculty member or advisor trained to use the method. The learning is compiled in portfolios documenting a student’s knowledge which are then assessed and granted credit. Individuals can also take standardized exams from non-profit organizations or exams

administered by higher education institutions to gain credit.

PLA helps students save time and money towards a degree or credential and helps employers save on additional employee training and tuition reimbursement costs. The biggest obstacle facing PLA is that many employers don’t know about it. This is changing, however, as more employers leverage PLA services to assist current employees to accelerate their education. Online services like those provided by CAEL at LearningCounts.org facilitate this process by allowing the entire process to occur online.

### Yes to education, yes to manufacturing

Today’s manufacturing industries drive the innovative products we use in our daily lives, and new advancements in technology contin-

ue to propel these industries forward. Present-day manufacturing in America continues to drive the global economy to new heights.

Now is the time for action, for Illinois employers and employers across the country to help workers get access to the education and training needed to keep advanced manufacturing strong. ■

### About the author

*Lynn Schroeder is Vice President, Client Relations, for the Council for Adult and Experiential Learning (CAEL). To reach Lynn, call 312-499-2610, or email [lschroeder@cael.org](mailto:lschroeder@cael.org). For more information, visit [www.cael.org](http://www.cael.org). CAEL is an IMA member company.*

## IP STRATEGY

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must be filed before a product is offered for sale, described in a publication, or shown at a trade show anywhere in the world. Thus, if you are interested in seeking **protection for your product outside the United States**, you should file a patent application before publicly disclosing the product in order to protect your rights in foreign countries with such a requirement.

**Institute a patent watch.** An easy way to monitor your competitors is to have a **patent watch** in place. On a regular basis (perhaps weekly or monthly), you should review your competitors’ newly issued patents and published applications. Since patent applications generally

publish 18 months from filing, you can learn about new products that competitors are developing, sometimes even before they are launched. This search can be performed on the U.S. Patent and Trademark Office’s website at [www.uspto.gov/patents/process/search](http://www.uspto.gov/patents/process/search) by any member of the public.

**Marking.** Once a patent issues for a product, the product (or its associated packaging) should be marked with the patent number in order to provide adequate notice to the public. In order to save manufacturers money, the America Invents Act allows a patentee to provide the required notice by virtual marking, which involves marking a product (or its packaging) with the word “patent” followed by a free-to-access Internet address that associates the patented item with the appropriate patent number. Thus, “U.S. Patent

No. 9,500,000” and “Patent: <http://example.com>” (replacing [example.com](http://example.com) with a company’s website address) are both examples of acceptable **patent marking**.

### Trademark issues

**Choose a protectable mark.** Not all trademarks are considered equal. For example, a mark that is descriptive, one that describes a product’s physical characteristics, generally is not eligible for trademark protection. In contrast, **a fanciful or suggestive mark is protectable.** A fanciful mark is typically a made-up word or a word that has no relation to the product while a suggestive mark suggests something about the product or service without actually describing it. If you are not certain whether the brand name you have chosen is descriptive or not, consult

see **IP STRATEGY** page 28



## Caterpillar to remain in Peoria, reveals plans for a riverfront campus

After a multi-year study focused on modernizing its global headquarters, Caterpillar Inc. recently reaffirmed it will remain in Peoria, Illinois, and revealed a design that will eventually span 31 acres on the city's riverfront. The key elements of the campus are:

- A three-tower building located in the heart of a six-block campus, which includes innovative work spaces and amenities designed to retain and attract the finest talent in the world.

- A commitment to invest and act as a catalyst in Peoria, helping revitalize the downtown and the region as a vibrant destination. While Caterpillar is truly a worldwide company with facilities that span the globe, Peoria remains its headquarters.

"Caterpillar's roots in the Peoria area run deep, and this year we celebrate 90 years as a company — a perfect time to share our plans of where we plan to be anchored as we continue to build, develop and power the world," said Caterpillar Chairman and CEO Doug Oberhelman. "This campus represents an investment in both our people and community, with such features as collaborative work areas, improved technology, a more energy-efficient design, green space and an expanded showcase of our historical equipment, along with food and retail shops — an inviting destination not only for employees, but also for customers, dealers and suppliers from around the world."

Illinois Governor Bruce Rauner joined Oberhelman for the announcement to tout Illinois' responsibility to businesses who call the state home. Illinois remains Caterpillar's largest concentration of employees and facilities anywhere in the world, with about 22,600 employees and two dozen facilities throughout the state.

"This is outstanding news for Peoria, Central Illinois and the entire

state of Illinois," said Governor Rauner. "Caterpillar has been a tremendous Illinois employer for 90 years. This is the kind of project we want to see — businesses making investments to engage, attract and retain the brightest and most innovative talent. As Caterpillar and other companies prepare themselves to compete in the 21st century, Illinois needs to make sure it is a help and not a hindrance to their efforts."

A display, containing a scale model and renderings of the campus, is available for viewing in the lobby of the Caterpillar Visitors Center. Caterpillar has been an IMA member since 1922.



## American Water names Karla Teasley Vice President of Customer Service and Bruce Hauk President of Illinois American Water

American Water Works Company, Inc., the largest publicly traded U.S. water and wastewater utility company, announced that its current president of Illinois American Water, Karla Teasley, was named vice president of Customer Service at American Water, effective January 1, 2015.

Teasley, who has served as president of Illinois American Water since 2007, will now lead the company's integrated customer service center with locations in Alton, Illinois, and Pensacola, Florida. The center serves American Water's regulated water and wastewater utilities in 16 states by providing call handling, billing and collections activities, as well as assistance and management of projects of both local and company-wide scope. Karla Teasley also serves on the IMA Board of Directors.

With Teasley's promotion, American Water has named Bruce Hauk its new president of Illinois American Water, also effective January 1, 2015.

Bruce Hauk currently serves as the director of Financial Analysis and Decision Support for American Water. Before his current role, Hauk served as vice president of

Operations for Indiana American Water, where he oversaw all operations within Indiana American Water's service districts.

More information can be found at [www.amwater.com](http://www.amwater.com). Illinois American Water is an IMA member company.



## Marsha Serlin of United Scrap Metal named to U.S. Manufacturing Council

U.S. Commerce Secretary Penny Pritzker has named three Illinoisans to serve on the U.S. Manufacturing Council, including Marsha Serlin of IMA member United Scrap Metal in Cicero.

Secretary Pritzker noted: "The strength of U.S. manufacturing is critical to our nation's economy and our competitiveness on the global stage. . . . I look forward to working together with the new and returning Manufacturing Council members, whose unique expertise and perspective will be integral to our efforts to boost the economy and create U.S. jobs."

The purpose of the Council is to ensure regular communication between government and the manufacturing sector, and provide a forum for discussing and proposing solutions to industry-related problems. Council members advise the Secretary of Commerce on government policies and programs that affect U.S. manufacturing.

The Council was established in 2004 to serve as the principal private sector advisory body to the Secretary of Commerce and the Government of the United States, on matters relating to the U.S. manufacturing industry.



## Philippi-Hagenbuch, Inc. celebrates 45 years in business

November 4, 2014 marked the 45th Anniversary of Philippi-Hagenbuch, Inc. which was co-founded by L.B. "Phil" Philippi (Pat Hagenbuch's Father) and LeRoy Hagenbuch, P.E. Since its founding,

PHIL has grown into an international company focussing on innovations for haulage equipment that has a wide reach, yet retains its modest, family owned footprint in Peoria, Illinois.

It all started with two shoe boxes that led to the first prototype of what would become our Autogate(R) Tailgate; a need was presented and a dream was born. Forty-five years, over a hundred patents, thousands of tailgates and hundreds of sideboards, truck bodies, water tanks, trailers and other specialty haulage equipment later and PHIL is going strong. From PHIL's humble beginnings in the basement of the Philippi house on Millbrook Road to the current 50-acre campus, PHIL has grown from servicing Quarries to a diversified group of stable industries made up by the Aggregates, Mining, Steel Mill, Landfill, Power Plant, Oil Refinery, Heavy Duty Agriculture and Forestry markets.

Today, PHIL is led by the third generation of the Philippi and Hagenbuch families. Philippi-Hagenbuch, Inc. has been an IMA member since 1975. For more information visit [www.philsystems.com](http://www.philsystems.com).



### Illinois organizations honored for achievements in environmental protection

Twenty-four Illinois companies and organizations were honored last October for their significant achievements in protecting the environment, helping sustain the future, and improving the economy. The Governor's Sustainability Awards were presented by the Illinois Sustainable Technology Center (ISTC) during a ceremony in Chicago.

Since 1987, ISTC has presented Governor's Awards to organizations in Illinois that have demonstrated a commitment to environmental excellence through outstanding and innovative sustainability practices. Any Illinois public or private organization is eligible to apply for the award. Winners are selected through a

rigorous process of review and examination by ISTC technical assistance experts.

"Investing in sustainability creates jobs, boosts our economy and is an investment in our future," Governor Quinn said. "These awards foster innovation and encourage our universities and businesses to help us build a stronger, greener Illinois."

"The linkage between sustainable policies and success in our businesses, our organizations and our communities has never been stronger," said ISTC Director Kevin O'Brien. "We are proud to call attention to these champions of sustainability who help lead the way by improving our quality of life through their responsible stewardship of people, profit and our planet."

#### 2014 Governor's Sustainability Award Winners (IMA members):

Baxter Healthcare Corporation — Round Lake  
Carus Corporation, Peru  
Caterpillar Inc., Joliet Facility, Joliet  
Caterpillar Inc. — Reman & Components Division — Mossville  
2014 Honorable Mention Governor's Sustainability Awards (IMA members):  
Cabot Corporation — Tuscola  
Caterpillar Visitors Center — Peoria

Information on the Governor's Sustainability Awards program, lists of previous winners, and information on technical assistance are available from the Illinois Sustainable Technology Center, [www.istc.illinois.edu](http://www.istc.illinois.edu).



### Sloan announces key promotion of Margie Rodino

Sloan, the world's leading manufacturer of commercial plumbing systems, announces that Margie Rodino, a Human Resources executive with expertise in aligning human capital initiatives with strategic goals across multiple industries, has been promoted from Vice President, Global Human Resources to Chief Talent Officer.



"I am proud to announce this promotion today," says Graham Allen, President and CEO. "Throughout her tenure at Sloan, Margie has contributed significantly to growing our business. As Chief Talent Officer, she will focus on the continuous effort to shape our culture and build Sloan's future."

Rodino graduated from Northern Illinois University with a BS in Personnel and Industrial Relations and is a Certified Compensation Professional. She is based in Franklin Park, Illinois.

Sloan is the world's leading manufacturer of commercial plumbing systems and has been in operation since 1906. Headquartered in Franklin Park, Illinois, the company is at the forefront of the green building movement. Sloan Valve Company has been an IMA member since 1980. For more information, visit Sloan Valve Company at [www.sloanvalve.com](http://www.sloanvalve.com).



### Wisdom Adhesives Worldwide announces the release of "The Wisdom Way" by Tom Rolando

IMA member Wisdom Adhesives Worldwide, a leading global manufacturer of packaging and converting hot melt and water-based adhesives and the longest continuously operating adhesives manufacturer in the world, announces the release of *The Wisdom Way*, by Tom



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Rolando, the company's Chief Operating and Technical Officer. The book focuses on six guiding principles for longevity and success that Wisdom Adhesives Worldwide has used for the past 140 years and continues to use every day, called The Wisdom Way.

The Wisdom Way is a comprehensive approach to conducting business that is based on six guiding principles: Passion, Action, Reinvention, Endurance, Relationships and Generosity.

*The Wisdom Way* goes in depth about the six guiding principles and explains how adopting each principle provides tremendous benefits. It also provides a brief look at the history of Wisdom Adhesives Worldwide and how The Wisdom Way has been an important part in guiding the company throughout its 140 years of business.

As a global supplier of environmentally safe and compliant water-based and hot melt adhesives to industrial users, Wisdom Adhesives Worldwide manufactures water-based resins, dextrans, PSAs and acrylics; hot melt EVAs and metalocenes, PES and PSAs; and protein adhesives and reactive products. Wisdom Adhesives Worldwide serves a wide range of industries, including packaging, converting, bookbinding, graphic arts, tissue and towel, product assembly, textiles and general purpose.

Since 1875, Wisdom Adhesives Worldwide has been advancing the technology of adhesives. The company's exceptional leadership has been headed by five consecutive generations of the Wisdom family. In this age of global entities, Wisdom Adhesives Worldwide stands out as a company of real people working person-to-person in order to respond to the needs of each and every industrial adhesives customer — and doing it fast.

For more information, call 847-841-7002 or visit [www.wisdomadhesives.com](http://www.wisdomadhesives.com). Wisdom Adhesives Worldwide is headquartered in Elgin, Illinois.



### KBC Tools: Is your toolbox bigger than ours? Prove it and win



Every person has a source of personal pride. For the metalworking professional, it's obvious what separates the men from the boys, so to speak. It all comes down to the size of the only thing that truly matters. The thing that gives life to their passion, and physical form to their hard efforts. It's the toolbox.

At KBC Tools and Machinery,

we've been helping North American metalworkers expand the size of their tool collection since 1965. But you know what? KBC's own toolbox is still bigger than yours, and we'd like to change that! Our "My Toolbox is Bigger Than Yours" contest is underway and runs all the way to April 30, 2015 so send us photos of your tool collection and we'll put you in the running to win one of three KBC Kash prizes:

- First Prize: Biggest Toolbox — \$1,000 KBC Kash
- Second Prize: Best Organized/Neatest Toolbox — \$500 KBC Kash
- Third Prize: Most Unique and/or Creative Toolbox — \$250 KBC Kash

Just think of what you could purchase from KBC's Master Catalog of over 100,000 items with any one of those KBC Kash prizes. Need a new tool cabinet? Grow that toolbox, snap a pic, and send it on over so your collection can be considered for one of three prizes, ([paula@kbc-tools.com](mailto:paula@kbc-tools.com)). With KBC's unbeatable prices, good-better-best range of products, and unparalleled inventory, there's never been a better time to get FREE MONEY to put back into your shop and your toolbox.

Visit our new and improved website, [www.kbctools.com](http://www.kbctools.com), for more information on the KBC Our Toolbox Is Bigger Than Yours Contest.



## OPTIONS

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normal winter would impact primarily those months. The months representing the balance of 2015 are more influenced by the continued growth in gas production, which was a key factor in refilling storage this summer.

*Finally, it is important to note that regional delivery point risks need to be considered for the coming winter.*

Last winter, regional wholesale gas delivery points in the Mid-Atlantic, Midwest and Northeast became constrained due to the demand created by the Polar Vortex



NYMEX Prompt Month & 12 Mo Strip Daily Closes

and supply struggled to keep up with demand in the short term as deliveries of gas from storage operators were at maximum rates in some cases. The market is aware of this regional price risk or "basis" to Henry Hub.

Until further gas pipeline infrastructure is put in place to increase

the deliverability of gas, winter months (December to March) remain subject to price volatility that can be at a significant premium to Henry Hub and have an adverse impact on customers' budgets.

Customers should consider price protection options sooner rather than later, in order to avoid price volatility within their market as the winter months commence throughout the United States.

To stay up-to-date on the latest natural gas trends in your market, subscribe to Constellation's blog today at [blogs.constellation.com/energy4business](http://blogs.constellation.com/energy4business). For questions, comments and concerns please contact Ed Wilson at [ed.wilson@constellation.com](mailto:ed.wilson@constellation.com) or 888-312-1563. ■



## IP STRATEGY

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with a trademark attorney who can steer you away from marks that are not protectable before you invest heavily in a mark.

**Perform a trademark clearance search.** Before dedicating your company's resources to a new brand name for a product, perform a **trademark clearance search**. A trademark search can be as simple as accessing the U.S. Patent and Trademark Office's website at [www.uspto.gov](http://www.uspto.gov) and searching through trademark applications and registrations directed to marks that are identical or very similar to the proposed product name. The advantages of this search is that it is quick and inexpensive; its disadvantage, however, is that it may not be complete because the website is limited to federal trademark applications and registrations and the search results are dependent upon the searcher's experience. To better avoid problems with new marks, you should have a clearance search performed by a search firm. Such a search tends to be more comprehensive as it includes state registrations, common law trademarks, and domain names, and is more reliable due to the experience of the searchers. Of course, the drawback is that these searches are more expensive. Regardless of which search is conducted, it is imperative

that some type of clearance search be performed and the results analyzed to prevent a company from investing a great deal of money in a mark that may have to be changed because of an infringement issue.

**Consider applying for a federal registration.** Under the common law, trademark rights accrue with adoption and use in commerce. Infringement claims involving a state or common law trademark can be brought in state court. Thus, a federal registration is not required in order to bring such a suit. **A federal registration, however, does have its advantages**, including providing nationwide scope and allowing federal court jurisdiction. Further, a federal trademark application can be filed on two bases, actual use in interstate commerce or intent to use. Thus, a trademark application can be filed before the mark has been actually used in commerce. Also, registration of the mark on the principal register serves as constructive notice of the registrant's claim of ownership to the mark. Lastly, if a registered mark has been in continuous use for five consecutive years, it is considered incontestable. All in all, the benefits afforded by a federal registration often justify the costs involved in obtaining the registration.

**Consider mark as domain name.** Once a trademark is chosen, you should determine whether the mark is available as a domain name and, if so, consider registering the mark as a domain name. It is less expensive to **register a domain name**

than to bring an action to enforce your trademark rights against a potential cybersquatter.

### **Institute a trademark watch.**

Much like the patent watch mentioned above, you can place your company's important trademarks on a similar type of watch. Such a **watch service** can help keep your marks strong by identifying, for example, trademark applications, uses of trademarks, domain names, and company names that might infringe or otherwise whittle away your company's rights.

**Marking.** To **clarify that your company is claiming rights to a mark**, the mark should be used with the designations "TM" for trademark or "SM" for service mark. Further, if a mark is protected with a federal registration, then the mark should be used in conjunction with the statutory ® notice.

## Copyright issues

**Marking.** **Mark** copyrightable materials with a) the word "copyright," an abbreviation for "copyright," or the symbol ©; b) an identification of the copyright owner; and c) the year of first publication.

**Work for hire.** When hiring a non-employee to create a copyrightable work, it is important that a **written agreement** between your company and this individual exists that refers to the work as a work made for hire and clarifies that your company is the owner of any copyrights in that work. For example, if you use a third party to design a company website or write a computer program, an executed written agreement should be in place with language to make clear that any copyright in the resulting work will be owned by your company.

## Conclusion

Although there are a myriad of issues to consider when running your own company, one key consideration is protecting the company's intellectual property. With the information offered above, you will have a head start in developing your company's strategy with respect to its intellectual property. ■



**Visit the IMA Video Reference Library**  
... valuable advice to help you run your company

**[www.ima-net.org](http://www.ima-net.org)**  
**[www.youtube.com/channel/UC5-kLFKCixuVOIL3xdrPb8Q](http://www.youtube.com/channel/UC5-kLFKCixuVOIL3xdrPb8Q)**

Constellation — Over 10 years as the IMA's endorsed energy supplier

# Crain's Midwest Manufacturers Summit



**February 26, 2015 • 7:30 a.m. – 10:30 a.m. • Ritz-Carlton, 160 East Pearson Street, Chicago, IL**  
**Crain's Midwest Manufacturers Summit Aimed At Senior Management At Manufacturing Companies**

## CRAIN'S MANUFACTURERS SUMMIT AGENDA

- |                   |   |   |
|-------------------|---|---|
| <b>7:30 a.m.</b>  | <b>Registration &amp; Networking Coffee Reception</b> | A select group of the region's leading manufacturing executives, including the Executive Vice President, Global Product Organization at Whirlpool Corporation, will be featured at Crain's annual Midwest Manufacturing Summit.   |
| <b>8:00 a.m.</b>  | <b>Breakfast</b>                                      |   |
| <b>8:15 a.m.</b>  | <b>Welcome Remarks</b>                                |   |
| <b>8:20 a.m.</b>  | <b>Keynote Presentation and Q&amp;A</b>               |   |
| <b>9:00 a.m.</b>  | <b>Networking Break</b>                               | Crain's will host the region's premiere educational and networking event focusing on the Midwest's vital manufacturing sector. Topics will include: manufacturing for growth, Midwest competitiveness and cooperation, innovation, global supply chain and workforce development. |
| <b>9:15 a.m.</b>  | <b>CEO Panel: Manufacturing for Growth</b>            |   |
| <b>10:30 a.m.</b> | <b>Conclusion</b>                                     |   |

## SPEAKERS:



**Keynote: David Szczupak**  
Executive Vice President,  
Global Product Organization  
at Whirlpool Corporation



**Todd Siwak**  
Chief Executive Officer,  
Ferrara Candy Company



**Gail Glasser**  
President,  
Century Fasteners and  
Machine Company



**Cary Wood**  
President,  
Chief Executive Officer,  
Spartan Corporation



**Ray Ziganto**  
President,  
Bi Link Corporation

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### **WATCHFIRE SIGNS**

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### **WRIGLEY MANUFACTURING— YORKVILLE**

Yorkville

## 2015 Calendar of events

Wednesday, March 11, 2015

### **IMA Breakfast Briefing: 3D Printing**

What is 3D printing? Does it make sense for my company? Financial agreements, liability insurance, IP protection. Oakbrook Terrace, 8:00-11:00 am

Wednesday, April 8, 2015

### **IMA Breakfast Briefing: Tax Incentives & Grants for Manufacturers**

IMA Staff will be on hand to discuss Tax Incentives & grants available for Illinois manufacturers. Oakbrook Terrace, 8:00-11:00 am

Thursday, April 16, 2015

### **IMA Breakfast Briefing: Industrial Systems Optimization Program**

ComEd Smart Ideas offers comprehensive studies addressing efficiency issues with solutions and provides a blueprint for saving energy and money. Each study provides valuable, expert analysis of your systems and identifies energy-efficiency projects that may significantly reduce energy waste and operating costs. Oakbrook, 8:00-11:00 am

Wednesday, May 6, 2015

### **IMA Business Day at the Capitol**

IMA's Business Day at the Capitol offers you the opportunity to meet with your elected officials to drive home our message of job growth and prosperity and to help our legislators understand the impact of their actions on Illinois manufacturing. Springfield, Noon-8:00 pm

Visit <http://www.ima-net.org/calendar-of-events> for information, pricing, registration, etc., related to all IMA events. For more information on IMA events, contact Kimberly McNamara at [kmcnamara@ima-net.org](mailto:kmcnamara@ima-net.org), 800-875-4462, ext. 9371

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## QUESTIONS?

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